

32B-7-101. Title.

This chapter is known as the "Off-premise Beer Retailer Act."

Enacted by Chapter 276, 2010 General Session

32B-7-102. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-7-201. State and local licensing -- Limitations.

(1) Subject to the other provisions of this title, a local authority may:

- (a) tax or prohibit the retail sale of beer;
- (b) subject to this part, issue, suspend, and revoke a local license to sell beer at retail for off-premise consumption;
- (c) establish proximity requirements for establishing premises where beer is sold at retail for off-premise consumption in relation to any community location; and
- (d) otherwise regulate the retail sale of beer for off-premise consumption subject to the requirements of Section 32B-7-202 and Part 3, Off-premise Beer Retailer Enforcement Act.

(2) A local authority may not issue to a minor a local license to sell beer at retail for off-premise consumption.

Enacted by Chapter 276, 2010 General Session

32B-7-202. General operational requirements for off-premise beer retailer.

(1) (a) An off-premise beer retailer or staff of the off-premise beer retailer shall comply with this section.

(b) Failure to comply with this section may result in a suspension or revocation of a local license.

(2) (a) (i) An off-premise beer retailer may not purchase, acquire, possess for the purpose of resale, or sell beer, except beer that the off-premise beer retailer lawfully purchases from:

- (A) a beer wholesaler licensee; or
- (B) a small brewer that manufactures the beer.

(ii) A violation of Subsection (2)(a) is a class A misdemeanor.

(b) (i) If an off-premise beer retailer purchases beer under this Subsection (2) from a beer wholesaler licensee, the off-premise beer retailer shall purchase beer only from a beer wholesaler licensee who is designated by the manufacturer to sell beer in the geographical area in which the off-premise beer retailer is located, unless an alternate wholesaler is authorized by the department to sell to the off-premise beer retailer as provided in Section 32B-13-301.

(ii) A violation of Subsection (2)(b) is a class B misdemeanor.

(3) An off-premise beer retailer may not possess, sell, offer for sale, or furnish beer in a container larger than two liters.

(4) A minor may not sell beer on the licensed premises of an off-premise beer

retailer unless:

(a) the sale is done under the supervision of a person 21 years of age or older who is on the licensed premises; and

(b) the minor is at least 16 years of age.

(5) (a) Subject to the other provisions of this Subsection (5), an off-premise beer retailer shall:

(i) display beer sold by the off-premise beer retailer in an area that is visibly separate and distinct from the area where nonalcoholic beverages are displayed; and

(ii) display a sign in the area described in Subsection (5)(a)(i) that:

(A) is prominent;

(B) is easily readable by a consumer;

(C) meets the requirements for format established by the commission by rule;

and

(D) reads in print that is no smaller than .5 inches, bold type, "These beverages contain alcohol. Please read the label carefully."

(b) Notwithstanding Subsection (5)(a), a nonalcoholic beer may be displayed with beer if the nonalcoholic beer is labeled, packaged, or advertised as a nonalcoholic beer.

(c) The requirements of this Subsection (5) apply to beer notwithstanding that it is labeled, packaged, or advertised as:

(i) a malt cooler; or

(ii) a beverage that may provide energy.

(d) The commission shall define by rule what constitutes an "area that is visibly separate and distinct from the area where a nonalcoholic beverage is displayed."

(e) A violation of this Subsection (5) is an infraction.

(6) (a) Staff of an off-premise beer retailer who directly supervises the sale of beer or who sells beer to a patron for consumption off the premises of the off-premise beer retailer shall wear a unique identification badge:

(i) on the front of the staff's clothing;

(ii) visible above the waist;

(iii) bearing the staff's:

(A) first or last name;

(B) initials; or

(C) unique identification in letters or numbers; and

(iv) with the number or letters on the unique identification badge being sufficiently large to be clearly visible and identifiable while engaging in or directly supervising the retail sale of beer.

(b) An off-premise beer retailer shall make and maintain a record of each current staff's unique identification badge assigned by the off-premise beer retailer that includes the staff's:

(i) full name;

(ii) address; and

(iii) (A) driver license number; or

(B) similar identification number.

(c) An off-premise beer retailer shall make available a record required to be made or maintained under this Subsection (6) for immediate inspection by:

- (i) a peace officer; or
- (ii) a representative of the local authority that issues the off-premise beer retailer license.

(d) A local authority may impose a fine of up to \$250 against an off-premise beer retailer that does not comply or require its staff to comply with this Subsection (6).

Amended by Chapter 307, 2011 General Session

32B-7-301. Title.

This part is known as the "Off-premise Beer Retailer Enforcement Act."

Enacted by Chapter 276, 2010 General Session

32B-7-302. Definitions.

Reserved

Enacted by Chapter 276, 2010 General Session

32B-7-303. Penalties related to sales to minors.

(1) (a) In addition to any criminal penalty that may be imposed, an individual is subject to the administrative penalties described in Subsection (1)(b) imposed by a local authority if:

- (i) the individual completes an alcohol training and education seminar;
- (ii) after completing the alcohol training and education seminar, the individual is found in violation of a law involving the sale of an alcoholic product to a minor;
- (iii) the violation described in Subsection (1)(a)(ii) is based on conduct that occurs while the individual is on duty as staff of an off-premise beer retailer; and
- (iv) the local authority brings an adjudicative proceeding against the individual.

(b) If the conditions of Subsection (1)(a) are met, a local authority shall impose the following administrative penalties:

(i) upon a first violation, the individual may not sell or directly supervise the sale of beer to a patron for consumption off the premises of the off-premise beer retailer until the individual retakes and completes an alcohol training and education seminar;

(ii) upon a second violation, the individual may not sell or directly supervise the sale of beer to a patron for consumption off the premises of the off-premise beer retailer until the later of:

- (A) 90 days from the day on which the administrative penalty is imposed; and
- (B) the day on which the individual:

- (I) retakes and completes the alcohol training and education seminar; and
- (II) completes any additional training that the local authority may require; and

(iii) upon a third or subsequent violation, the individual may not sell or directly supervise the sale of beer to a patron for consumption off the premises of the off-premise beer retailer until the later of:

- (A) one year from the day on which the administrative penalty is imposed; and
- (B) the day on which the individual:

- (I) retakes and completes an alcohol training and education seminar; and

(II) completes any additional training that the local authority may require.

(2) (a) During the time period in which an individual is prohibited from selling or directly supervising the sale of beer under Subsection (1)(b), an off-premise beer retailer may not allow that individual to:

- (i) directly supervise the sale of beer for the off-premise beer retailer; or
- (ii) sell beer for the off-premise beer retailer.

(b) A violation of this Subsection (2) is grounds for the immediate suspension of the off-premise beer retailer's license.

(3) (a) In addition to any criminal penalty that may be imposed, an off-premise beer retailer is subject to the administrative penalties imposed by a local authority described in Subsection (3)(b) if:

- (i) staff of the off-premise beer retailer is found in violation of a law involving the sale of an alcoholic product to a minor;
- (ii) the violation described in Subsection (3)(a)(i) occurs while the staff is on duty for the off-premise beer retailer; and
- (iii) the local authority brings an adjudicative proceeding against the off-premise beer retailer.

(b) If the conditions of Subsection (3)(a) are met, a local authority shall impose the following administrative penalties:

(i) upon a first violation, the local authority shall issue a written warning against an off-premise beer retailer;

(ii) upon a second violation, an off-premise beer retailer shall pay a civil fine of \$250;

(iii) upon a third violation, an off-premise beer retailer shall pay a civil fine of \$500;

(iv) upon a fourth or subsequent violation, an off-premise beer retailer shall:

(A) pay a civil fine of \$500;

(B) have its off-premise beer retailer license suspended for a period of 30 consecutive days from the date on which the administrative penalty is imposed; and

(C) be placed on probation for a period of one year from the date on which the administrative penalty is imposed; and

(v) upon any violation by the off-premise beer retailer or any on-duty staff of the off-premise beer retailer during the period of probation specified in Subsection (3)(b)(iv)(C):

(A) the off-premise beer retailer's license to sell beer shall be revoked; and

(B) the off-premise beer retailer may not reapply for a new license for at least six months from the date of revocation.

(4) (a) An off-premise beer retailer's failure to pay a fine imposed under Subsection (3) within 30 days of the day on which a fine is imposed is grounds for the immediate suspension of the off-premise beer retailer's license to sell beer until payment is made.

(b) An off-premise beer retailer's failure to pay the fine described in Subsection (4)(a) within the time period described in Subsection (4)(a) is grounds for revocation of the off-premise beer retailer's license.

32B-7-304. Hearings.

(1) A local authority shall conduct a hearing under this part if one of the following requests a hearing before the local authority:

- (a) an off-premise beer retailer;
- (b) an individual who directly supervises the sale of beer to a patron for consumption off the premises of the off-premise beer retailer; or
- (c) an individual who sells beer to a patron for consumption off the premises of the off-premise beer retailer.

(2) A local authority conducting a hearing under this section shall provide the person requesting the hearing:

- (a) notice of the hearing; and
- (b) an opportunity to be heard at the hearing.

Enacted by Chapter 276, 2010 General Session

32B-7-305. Tracking of enforcement actions -- Costs of enforcement actions.

(1) A local authority that pursuant to this part adjudicates an administrative penalty for a violation of a law involving the sale of an alcoholic product to a minor, shall:

- (a) maintain a record of an adjudicated violation until the record is expunged under Subsection (3);
- (b) include in the record described in Subsection (1)(a):
 - (i) the name of the individual who commits the violation;
 - (ii) the name of the off-premise beer retailer for whom the individual is a staff member at the time of the violation; and
 - (iii) the date of the adjudication of the violation; and
- (c) provide the information described in Subsection (1)(b) to the Highway Safety Office of the Department of Public Safety within 30 days of the date on which a violation is adjudicated.

(2) (a) The Highway Safety Office shall develop and operate a system to collect, analyze, maintain, track, and disseminate the violation history information received under Subsection (1).

(b) The Highway Safety Office shall make the system described in Subsection (2)(a) available to:

- (i) assist a local authority in assessing administrative penalties under Section 32B-7-303; and
- (ii) inform an off-premise beer retailer of an individual who has an administrative violation history under Section 32B-7-303.

(c) The Highway Safety Office shall maintain a record of violation history information received pursuant to Subsection (1) until the record is expunged under Subsection (3).

(3) (a) A local authority and the Highway Safety Office shall expunge from the records maintained an administrative penalty imposed under Section 32B-7-303 for purposes of determining future administrative penalties under Section 32B-7-303 if the individual has not been found in violation of any law involving the sale of an alcoholic

product to a minor for a period of 36 consecutive months from the day on which the individual is last adjudicated as violating a law involving the sale of an alcoholic product to a minor.

(b) A local authority shall expunge from the records maintained by the local authority an administrative penalty imposed under Section 32B-7-303 against an off-premise beer retailer for purposes of determining future administrative penalties under Section 32B-7-303 if the off-premise beer retailer or any staff of that off-premise beer retailer has not been found in violation of any law involving the sale of an alcoholic product to a minor for a period of 36 consecutive months from the day on which the off-premise beer retailer or staff of the off-premise beer retailer is last adjudicated as violating a law involving the sale of an alcoholic product to a minor.

(4) The Highway Safety Office shall administer a program to reimburse a municipal or county law enforcement agency:

(a) for the actual costs of an alcohol-related compliance check investigation conducted pursuant to Section 77-39-101 on the premises of an off-premise beer retailer;

(b) for administrative costs associated with reporting the compliance check investigation described in Subsection (4)(a);

(c) if the municipal or county law enforcement agency completes and submits to the Highway Safety Office a report within 90 days of the compliance check investigation described in Subsection (4)(a) in a format required by the Highway Safety Office; and

(d) in the order that the municipal or county law enforcement agency submits the report required by Subsection (4)(c) until the amount allocated by the Highway Safety Office to reimburse a municipal or county law enforcement agency is spent.

(5) The Highway Safety Office shall report to the Utah Substance Abuse Advisory Council by no later than October 1 following a fiscal year on the following funded during the prior fiscal year:

(a) compliance check investigations reimbursed under Subsection (4); and

(b) the collection, analysis, maintenance, tracking, and dissemination of violation history information described in Subsection (2).

Enacted by Chapter 276, 2010 General Session

Amended by Chapter 276, 2010 General Session, (Coordination Clause)